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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE BARAJAS, JR.,

Defendant and Appellant.

F076952

(Super. Ct. Nos. 16CR-04530,
16CR-08048)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Thomas P. Breen, Judge. (Retired Judge of the San Benito Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Peña, J. and DeSantos, J.

In case Nos. 16CR-04530 (case No. 4530) and 16CR-08048 (case No. 8048), appellant Jose Barajas, Jr., pled no contest in each case to one count of possession of a concealed dirk or dagger (Pen. Code,¹ § 21310). After he violated his probation in both cases the court sentenced him to an aggregate local commitment of three years eight months. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2016, at approximately 8:55 a.m., a Los Banos Police Officer investigating a report of a trespasser contacted Barajas, who matched the description of the alleged trespasser, as he walked down the street. During a consent search, the officer found a metal dagger-type knife in one of the pockets of Barajas's jacket (case No. 4530).

On September 28, 2016, in case No. 4530, Barajas pled no contest to possession of a concealed dirk or dagger. After Barajas waived time for sentencing, the court suspended imposition of sentence and placed him on probation for three years, on condition he serve 30 days in jail.

On October 26, 2016, appellant admitted violating his probation by consuming marijuana and failing to keep a regularly scheduled appointment with his probation officer. Barajas again waived time for sentencing and the court continued Barajas on probation and ordered him to serve an additional 30 days in jail.

On December 13, 2016, during a probation compliance check, a police officer found a kitchen knife in the waistband of Barajas's pants, and a glass pipe in one of his pockets (case No. 8048).

On March 21, 2017, in case No. 8048, Barajas pled no contest to possession of a concealed dirk or dagger and the court found he violated his probation in case No. 4530. The court then continued Barajas on probation in case No. 4530; in case No. 8048, it

¹ All statutory references are to the Penal Code.

placed him on probation for three years on condition that he serve nine months in custody.

On August 10, 2017, the probation department filed an “Affidavit of Probation Violation” in each case alleging several probation violations.

On August 23, 2017, after Barajas admitted violating his probation in both cases by consuming methamphetamine on June 8, 2017, the court continued Barajas on probation in both cases on condition that he serve an additional 90 days in custody in case No. 4530 and 30 days in custody in case No. 8048.

On December 8, 2017, the probation department filed an “Affidavit of Probation Violation” in each case alleging Barajas violated his probation in each case by consuming methamphetamine on September 25, 2017, November 27, 2017, and December 1, 2017; failing to report for regularly scheduled appointments with his probation officer on October 12, 2017, November 20, 2017, and December 4, 2017; and committing a battery offense (§ 242) on December 2, 2017.

On January 3, 2018, Barajas admitted violating his probation in each case as alleged in the affidavits.

On January 5, 2018, the court sentenced Barajas to an aggregate local term of three years eight months, the aggravated term of three years on his conviction in case No. 4530 and a consecutive eight-month term on his conviction in case No. 8048, one-third the middle term of two years. The hearing, however, was continued to allow the probation department to calculate Barajas’s presentence custody credit.

On January 23, 2018, Barajas filed a timely notice of appeal in each case.

On January 26, 2018, at a hearing on Barajas entitlement to presentence custody credit, the court erroneously stated that in case No. 4530, Barajas was entitled to 109 days of presentence custody credit consisting of 55 days of actual custody credit and 54 days of conduct credit. It also erroneously stated that in case No. 8048, Barajas was entitled to 424 days of presentence custody credit consisting of 212 days of actual custody credit

and 212 days of conduct credit. Defense counsel responded by asking the court to award “the majority of credits” against the three-year term it imposed and the prosecutor stated he did not object if defense counsel wanted all the credits allocated to case No. 4530. The court then erroneously stated that it had imposed the three-year term on case No. 8048. After defense counsel stated that he wanted the credits allocated to that case, the court allocated all Barajas’s presentence custody credit² against the term it imposed in case No. 8048.

On January 31, 2018, the court issued an abstract of judgment that indicated that the court imposed a three-year term in case No. 8048, a consecutive eight-month term in case No. 4530, and that it awarded all of Barajas’s presentence custody credit against the term it imposed in case No. 8048.³

Barajas’s appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Barajas has not responded to this court’s invitation to submit additional briefing. However, the record clearly indicates that on January 5, 2018, the court sentenced Barajas to a three-year term on his conviction in case No. 4530 and that during the January 26, 2018, hearing on credits, the court erroneously stated that it had imposed that term on Barajas conviction in case No. 8048. Further, it is clear from the discussion on January 26, 2017, that the court intended to award all of Barajas’s presentence custody credit against the term it imposed in case No.

² The court awarded Barajas 533 days of presentence custody credit consisting of 267 days of presentence actual custody credit and 266 days of presentence conduct credit.

³ On November 14, 2018, the trial court issued an amended abstract of judgment that made some unrelated changes to the original abstract.

4530.⁴ Therefore, we will direct the trial court to issue an amended abstract of judgment that corrects these errors.

DISPOSITION

The trial court is directed to issue an amended abstract of judgment that shows in section 1 that the court imposed the aggravated term of three years on appellant's conviction in case No. 16CR-04530 and a consecutive eight-month term on his conviction in case No. 16CR-08048. The abstract should also indicate in section 16 that in case No. 16CR-04530 the court awarded Barajas 533 days of presentence custody credit consisting of 267 days of presentence actual custody credit and 266 days of presentence conduct credit. The court shall forward the amended abstract of judgment to the appropriate authorities. In all other respects, the judgment is affirmed.

⁴ Parenthetically we note that Barajas was not entitled to presentence custody credit for all the days he spent in presentence custody against the term imposed in case No. 8048 because he served many of those days prior to committing the offenses underlying that case. (§ 2900.5, subd. (b) ["For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted."]))